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11                 Attorney for defendant David Reid

12                 IN THE UNITED STATES DISTRICT COURT

13                 FOR THE DISTRICT OF NEW MEXICO

14                 UNITED STATES OF AMERICA,

15                 Plaintiff,

16                 CR-05-1849 JH

17                 vs.

18                 DAVID REID,

19                 Defendant.

20                 Response to Plaintiff's Notice of Pending Issues

21                 It is the understanding of counsel for the Defendant Reid that the only  
22                 issues to be addressed at the upcoming hearing will be the discovery  
23                 issues specifically related to the upcoming *Franks* hearing. Parenthetically,  
24                 a *Franks* hearing is not limited to factual development of the specific  
25                 issues that the Court has already found to contain material misstatements  
26                 or omissions. Once a Court makes a finding that a *Franks* Hearing is  
                       mandated, all facts that are related to the search or wiretap are subject to

1 full development. For example, in United States v. Gonzalez, 412 F.3d  
2 1102(9th Cir. 2005), the hearing involved the full development of all  
3 information available to the Government and cross examination of the case  
4 agent regarding all of the steps that were claimed to have not been taken  
5 due to ineffectiveness or danger. These were in addition to the specifically  
6 articulated grounds found supporting the request for *Franks* Hearing.<sup>1</sup>

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8 In this regard, the Government has agreed to have the affiant  
9 available at the hearing without the necessity of the issuance of a  
10 subpoena for purposes of cross examination by defense counsel.<sup>2</sup>

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12 The sequencing that counsel for the plaintiff and the defense had  
13 previously agreed to and related to the Court is that the *Franks* hearing  
14 would take place and evidence would be developed there. A hearing for  
15 argument on the Motion to Suppress (Wiretap) evidence would be set  
16 thereafter in order to give counsel time to evaluate, and brief if necessary,  
17 the evidence developed at that hearing. If the Motion to Suppress  
18 (Wiretap) is granted, there would be no need for further steps. If the  
19 Motion to Suppress is denied, a hearing would be scheduled on any

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24 <sup>1</sup> The reality herein is that the affidavit concedes that not all facts were  
25 presented. Thus, all facts are relevant to the *Franks* inquiry.

26 <sup>2</sup> The parties have agreed that testimony of Dana Jarvis regarding wiretap issues  
only will be presented by deposition at the hearing.

1 remaining discovery and other issues that were trial-related. A trial date  
2 would also be set to follow that hearing.  
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Electronically filed,

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11 /s/ Walter Nash  
12 Walter Nash, for Defendant Reid  
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**CERTIFICATE OF SERVICE**  
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6 I hereby certify that on this 24<sup>th</sup> day of March, 2010, I filed the foregoing  
7 electronically through the CM/ECF system, which caused all counsel to be served by  
8 electronic means, as more fully reflected on the Notice of Electronic filing.  
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10 Electronically filed  
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Walter Nash

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